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Chairperson: Ms. Picco ..... (Monaco)

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The meeting was called to order at 3.10 p.m.

Agenda item 86: The scope and application of the principle of universal jurisdiction (*continued*) (A/65/181)

1. **Mr. Gouider** (Libyan Arab Jamahiriya) said that the report of the Secretary-General on the scope and application of the principle of universal jurisdiction (A/65/181) had pointed to the lack of a universally accepted and clear definition of the concept. The purpose of universal jurisdiction was to combat impunity for certain specific grave crimes, without prejudice to such fundamental principles as national sovereignty and the immunity of State officials. The conditions for its application, however, including goodwill and respect for political stability and consensus, had been eroded by certain national judicial bodies over the previous years.

2. The African Union at the summit level had affirmed its support for the fight against impunity, while repeatedly calling for the principle of universal jurisdiction to be thoroughly reviewed and implemented objectively and transparently. The concerns of the African Union had led to a series of excellent technical and political discussions, and hence to the inclusion of the item on the agenda of the Committee.

3. At its current session, the Committee should determine the scope and application of the principle of universal jurisdiction, placing it in the appropriate legal framework and drawing on the many excellent reports compiled by independent experts. His delegation hoped that the Committee could arrive at a consensus on the topic.

4. **Mr. Nduhungirehe** (Rwanda) said that the international arrest warrants issued against the leadership of his country had been politically motivated, one-sided and based almost entirely on the testimony of Government opponents. His delegation did not take issue with the principle of universal jurisdiction itself, as a means of eradicating impunity for serious crimes, but with its abuse, as individual judges with political agendas issued arrest warrants in violation of all rules of judicial procedure. A legal framework should therefore be established to govern universal jurisdiction, in order to avoid arbitrariness and abuse.

5. To achieve that goal, a moratorium should be placed on the execution of warrants already issued, pending their consideration not only within the United Nations, but also between the African Union and the European Union. A review mechanism should also be established whereby the decisions of individual judges applying the principle of universal jurisdiction could be appealed to another tribunal, whether national, regional or international. The community of nations must initiate appropriate reforms to combat impunity for the gravest crimes, while ensuring that individual judges did not undermine the harmonious relations between nations. His country stood ready to contribute to that effort.

6. **Mr. Eriksen** (Norway) said that the traditional justification for the exercise of universal jurisdiction was that, under treaty or customary international law, the crime was of such a serious nature that it was of concern to the international community and was therefore directed against all States. Universal jurisdiction was often perceived as a secondary type of jurisdiction which applied when no State would exercise jurisdiction over the crime. One of the major achievements of international relations and international law over the past decades had been the shared understanding that there should be no impunity for serious crimes; all States subscribed to that principle.

7. The issue of universal jurisdiction should be approached with caution as there was no general agreement as to its definition or the crimes to which it should apply. That being the case, his delegation wondered whether it was advisable to try to reach consensus on a list of such crimes, when even the widely acknowledged Princeton Principles on Universal Jurisdiction did not include an exhaustive list. Instead, the Committee should consider whether there were procedural or organizational recommendations which all States shared. In that connection, the report of the Secretary-General contained useful information about how various States had organized their prosecuting authority. That material could be expanded by submissions from more States. The United Nations Guidelines on the Role of Prosecutors could also be helpful.

8. Although it fully recognized the relevance of issues of immunity when discussing criminal proceedings against officials of other States, his delegation considered that the Committee should not

pursue a discussion on criminal immunity under the current agenda item. First of all the question of immunity as an obstacle to considering a case on its merits arose only after the court had established its jurisdiction, and it could arise with regard to the exercise of all types of jurisdiction, not only universal jurisdiction. In addition, any discussion of immunity for State officials might prejudice consideration of the academic work of the International Law Commission related to the topic.

9. His delegation remained convinced that universal jurisdiction was an important tool for States to ensure that the most serious crimes did not go unpunished, and that it must be applied only in the interest of justice. Any attempt to assert jurisdiction for political reasons must be repelled. Universal jurisdiction, as was the case for all other legal principles, must not be abused or misused.

10. **Ms. Kaewpanya** (Thailand) said that, while it was generally agreed that universal jurisdiction should be exercised over certain crimes which were so serious that they affected the international community as a whole, its scope and application remained a matter of debate among States and legal scholars. Universal jurisdiction should not be confused with the obligation to prosecute or extradite (*aut dedere aut judicare*). Universal jurisdiction was a basis for jurisdiction only and did not itself imply an obligation to submit a case for potential prosecution. In that sense, universal jurisdiction was quite distinct from the obligation to extradite or prosecute, which was primarily a treaty obligation whose implementation was subject to conditions and limitations set out in a particular treaty containing the obligation. Any attempt to exercise treaty-based criminal jurisdiction against a non-State party would therefore have no legal basis.

11. A distinction should also be made between universal jurisdiction exercised by national courts and the criminal jurisdiction exercised by international tribunals such as the International Criminal Court. International criminal tribunals prosecuted offences by virtue of their constituent instruments, which identified those offences as the basis of their jurisdiction *ratione materiae*. As such, they were not crimes subject to universal jurisdiction, but treaty offences with specific elements identified.

12. With the exception of piracy, there was no general consensus among States as to which crimes were subject to universal jurisdiction under customary international law. That was one of the main reasons for the differences in the interpretation of the scope of universal jurisdiction and in its application at the national level. In Thailand, for example, universal jurisdiction had been recognized over acts of piracy. Its Criminal Code also provided for extraterritorial jurisdiction over offences related to national security as well as counterfeiting. Under international conventions, its national courts could also exercise extraterritorial jurisdiction over offences such as human trafficking and aircraft hijacking.

13. **Mr. Park** Chull-joo (Republic of Korea) said that his delegation understood universal jurisdiction as the power of a State to punish certain crimes unconnected to its territory, its nationals or its special interests on behalf of the international community. It was an essential mechanism for combating impunity, especially in respect of serious crimes. His delegation did not oppose universal jurisdiction, provided it was exercised in accordance with the provisions of treaties and the rules of customary international law and was not misused for political ends.

14. The principle of *aut dedere aut judicare* was not synonymous with universal jurisdiction, but the two concepts were linked. If a State was a signatory to treaties containing the obligation to prosecute or extradite, it might exercise jurisdiction over a crime otherwise entirely unrelated to it. In order to implement relevant international treaties, the Republic of Korea had adopted laws stipulating that foreign nationals accused of serious crimes subject to universal jurisdiction must be physically present in Korean territory for the principle to be applied.

15. The scope and application of the principle of universal jurisdiction should be studied further. The International Law Commission could be asked to make a contribution on the topic, as it was already considering the obligation to extradite or prosecute.

16. **Mr. Válek** (Czech Republic) said that the principle of universal jurisdiction was an important tool in combating impunity for perpetrators of serious crimes when no other basis for jurisdiction existed. His delegation would therefore oppose any hasty efforts to restrict that principle, whether in the form of a new convention or otherwise. It was the task of States to set out the scope and application of that principle in their domestic law, while respecting the relevant rules of

international law. The issue of judicial independence and impartiality was also closely linked to that of universal jurisdiction. Prosecutors should be free of political influence and should not take up or drop cases on the request of any Government. In that regard, proposals to establish an international regulatory body or system of review were unacceptable to his delegation.

17. The scope and application of the principle of universal jurisdiction was a legal issue, not a political one, even though it could have political implications. As such, it should be left to expert legal bodies, such as the International Law Commission, which could determine, inter alia, the crimes which would be subject to universal jurisdiction under customary international law. Although it overlapped somewhat with the obligation to extradite or prosecute (*aut dedere aut judicare*), the principle of universal jurisdiction should be referred to the Commission as a separate topic.

18. **Mr. Ndiaye** (Senegal) said that his delegation fully adhered to the use of universal jurisdiction to ensure that perpetrators of serious offences were brought to justice, provided that jurisdiction was exercised judiciously and in compliance with other generally accepted rules of international law. A clear definition of the concept of universal jurisdiction, its scope and limits and specific rules for its application were needed to avoid tension in international relations.

19. Although universal jurisdiction had originally applied only to piracy, it was now widely accepted that customary law authorized its exercise for crimes against humanity, war crimes and torture. While the 1949 Geneva Conventions and other treaties provided for the exercise of universal jurisdiction with respect to such crimes, although usually only when the perpetrator was present in the territory of the forum State, its application outside the framework of those treaties was controversial and needed clarifying. The principle of universal jurisdiction was an exception to the traditional rules of territorial jurisdiction, active and passive personality and protective jurisdiction traditionally recognized under international law. Such jurisdiction might be exercised in order to bring the perpetrators of particularly serious crimes to justice, but it did not apply to all international crimes. Moreover, it could not be applied in contravention of the norms and standards of international law, in particular with regard to the immunities accorded to State officials under customary international law.

20. The prosecution of perpetrators of serious crimes should not depend on their country or region of origin. The double standard sometimes seen in universal jurisdiction cases attested to the political considerations that could underlie its application. Obviously, politicization and selectivity could only weaken the principle of universal jurisdiction and make its objective harder to achieve. Recent developments underscored the need to regulate its application in order to prevent abuse, maintain the sovereign equality of Member States and safeguard international peace and security.

21. **Mr. Yáñez-Barnuevo** (Spain), noted that the report of the Secretary-General showed that universal jurisdiction was an operative institution in a variety of countries in all regions and could not be associated with one particular continent. Under Spanish law, as recently reformed, judges could only prosecute perpetrators of serious crimes committed anywhere in the world when no other international or third-country court had initiated proceedings against them and when they were present in Spanish territory or when the victim was a Spanish national.

22. Spain preferred the suggestion of referring the issue of universal jurisdiction to the International Law Commission rather than forming a working group of the Sixth Committee to consider it. The Commission was best placed to consider the issue from a technical standpoint without political considerations. It was already examining the topics of the obligation to extradite or prosecute (*aut dedere aut judicare*) and the immunity of State officials from foreign criminal jurisdiction, which were both closely linked to the question of universal jurisdiction. In addition, universal jurisdiction had a significant international law component which had already been considered by other academic bodies. Nonetheless, his delegation could still support a solution whereby a working group was established to examine State practice on the issue and submit a report to the International Law Commission, which would consider the issue further and then submit a document to the General Assembly for its consideration.

23. **Ms. Štiglic** (Slovenia) said that certain crimes were so serious and harmful that they affected the fundamental interests of the entire international

community, which must therefore act to promote justice and accountability. Universal jurisdiction applied to such crimes because they were universally condemned and because all States had a shared interest in proscribing them and prosecuting their perpetrators. Although States had been accused of abusing universal jurisdiction, the report of the Secretary-General (A/65/181) clearly showed that national legislations provided safeguards to prevent the indiscriminate or politicized use of universal jurisdiction. Only a few States had enacted absolute universal jurisdiction laws and only for the most serious criminal offences. However, most States based their prosecution only on conditional universal jurisdiction for relevant crimes. Universal jurisdiction was an instrument of last resort, applicable only after the principles of territorial, national and protective jurisdiction had been satisfied.

24. Although universal jurisdiction was regulated by both customary and conventional international law, it was primarily a matter of national jurisdiction, to be regulated by national legislation. Prosecutions on the basis of universal jurisdiction were actually very rare, but there were other forms of extraterritorial jurisdiction provided for by treaty. Her Government had always advocated for the victims of grave international crimes and for the protection of human rights and dignity. The culture of impunity for such crimes must end if post-conflict societies were to enjoy sustainable peace.

25. **Ms. Guo** Xiaomei (China) said that, apart from piracy there was no unanimity among States and therefore no established customary law about which crimes were subject to universal jurisdiction. The obligation to extradite or prosecute contained in some international treaties should be distinguished from universal jurisdiction. It was a treaty obligation applicable only to States parties to the instrument in question, which set out specific conditions under which the obligation applied; those conditions differed from one treaty to another. When exercising jurisdiction, States must respect the immunity enjoyed by other States under international law, including the immunity of Heads of State and other officials, and the immunity of States' property. Abuse of "universal jurisdiction" might constitute a violation of international law, infringe on the sovereignty and dignity of the States concerned, and jeopardize the stability of international relations. States should therefore avoid exercising it over other States until a common understanding of the concept and its application was reached.

26. **Mr. Dahmane** (Algeria) said that the fight against impunity was both a moral and a legal obligation and should be conducted in a spirit of transparency and in accordance with international law. The principle of universal jurisdiction could only be a last resort; it was a complementary, or indeed subsidiary, part of the mechanism for international judicial cooperation. The types of crime covered by the principle required precise definition. Universal jurisdiction could not be invoked in situations covered by other international legal rules that conflicted with it. For example, the sovereignty of States and the immunity of their representatives must be respected. Defining the scope of the principle would help to limit its abuse or politicization. Closer attention should be given to the idea of a mechanism to review cases of abuse of universal jurisdiction.

27. **Ms. Millicay** (Argentina) said that the principle of universal jurisdiction was an exceptional means of excising criminal jurisdiction in order to combat impunity for crimes affecting the international community as a whole and was governed by the rules of customary and treaty law. It should not be confused with the extraterritorial exercise of criminal jurisdiction or with the obligation to extradite or prosecute. Moreover, the Committee should avoid duplicating the work of other entities such as the International Law Commission.

28. While the report of the Secretary-General contained interesting information on the opinions of Member States on the definition and scope of the concept, what would be more helpful was a compilation of the international norms providing for universal jurisdiction. It was interesting that States had referred to different international norms as establishing international jurisdiction. Nor did the categories of crime identified in national legislation always coincide with those of international treaties. The Committee might consider referring the topic to the International Law Commission, or recommending that the Secretary-General should carry out an objective compilation of existing international norms for consideration at the following session of the General Assembly.

29. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) said that the principle of universal jurisdiction allowed a State to exercise its jurisdiction over a crime

with which it had no connection other than the presence of the alleged offender in its territory. Some jurists believed that the establishment of the International Criminal Court would make the principle of universal jurisdiction obsolete. However, his delegation was of the view that it could preserve a certain legitimacy as a mechanism to combat impunity for serious crimes. The principle was gaining prominence, but was also a source of animosity and diplomatic tension. Nevertheless, international criminal justice was working, and the perpetrators of serious crimes had reason to feel uneasy.

30. Universal jurisdiction could be invoked in order to ensure that cases of torture, crimes against humanity or genocide did not go unpunished. However, a consensus on certain prerequisites would be needed in order to facilitate the process. For example, the obligation to extradite or prosecute should not be seen as a panacea to remedy flaws in the extradition regime. Such an interpretation would amount to a misuse of the principle of universal jurisdiction.

31. Moreover, many States had not yet introduced provisions for the prosecution of such international crimes. His country's legislation made only general provisions on the topic, and did not include a law on universal jurisdiction. It was therefore necessary to find a modus vivendi in order to dispel the perception that a State or group of States had monopolized the exercise of universal jurisdiction. In recent years, some 30 former or current senior State officials had been indicted under that principle. Curiously, most were from the southern hemisphere. If each and every Member State followed that practice, chaos would ensue.

32. The question of immunities added further complications. It was a sensitive matter for a State exercising universal jurisdiction to act in the face of immunity conferred by another State. The judgment issued by the International Court of Justice in the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* would have a lasting impact on the development of international law, and would definitively clarify some of the ambiguities regarding immunities. An international consensus must be sought in order to harmonize the terms and concepts relating to universal jurisdiction.

33. **Mr. Delgado Sánchez** (Cuba) said that the topic required a comprehensive and transparent discussion among all Member States. Cuba supported the efforts of the international community to prosecute the perpetrators of the most serious crimes against humanity. However, his country rejected any manipulation of the principle of universal jurisdiction for political and discriminatory purposes. The information contained in the report of the Secretary-General (A/65/181) showed that the principle had been used by courts in developed countries against citizens of the Third World.

34. The judicial process must take place in rigorous compliance with the principles enshrined in the Charter, including sovereign equality of States, political independence and non-interference in internal affairs. Charges and arrest warrants against senior officials should not be issued without taking into account their functional immunities. Cuba was concerned at the unilateral exercise of criminal and civil jurisdiction by national courts without reference to international conventions and law, including international humanitarian law, and condemned the adoption of politically motivated national legislation targeting other States.

35. The report showed that States held diverging views with regard to the scope and application of universal jurisdiction. The 1949 Geneva Conventions had introduced the principle for serious crimes, and obligated States to bring such persons, regardless of their nationality, before its own courts or another High Contracting Party concerned. Although the Conventions did not provide that universal jurisdiction must be exercised regardless of where the violation was committed, they were generally understood as having established universal jurisdiction.

36. The exercise of universal jurisdiction must be governed by treaties and must complement national jurisdiction. It should not be invoked where a national court had already stated its intention to prosecute. It was vital to determine, on the basis of international law, which crimes would be covered by universal jurisdiction and how it could be exercised. The principle should be invoked only under exceptional circumstances and where there was no alternative.

37. **Mr. Swiney** (United States of America) said that his country understood universal jurisdiction to refer to the assertion of criminal jurisdiction by a State for

certain grave offences, where the only link to the particular crime was the presence on its territory of the alleged offender. Various federal statutes provided that the United States could exercise that type of jurisdiction over such crimes as piracy, genocide, torture and terrorism-related offences. Although prosecutions based solely on that principle, without any other connection to the country, were rare, universal jurisdiction when applied prudently, with appropriate safeguards and with due consideration for the jurisdiction of other States, could be an important tool to ensure that perpetrators of the most serious crimes were brought to justice.

38. Despite the importance and long history of universal jurisdiction, basic questions remained regarding its definition, scope and relationship to treaty-based obligations. There was a need to ensure that decisions to invoke the principle were taken in an appropriate manner, including where there were other States that might exercise jurisdiction. The practical application of the principle also varied from one country to another.

39. His delegation was reviewing the submissions of Member States, which had very usefully been posted on the United Nations website and provided valuable insights into the perspectives and practices of States. However, a majority had not yet responded; his delegation urged them to do so. Lastly, as a general point, his delegation called on representatives to refrain from making politicized statements and focus on the topic under consideration.

40. **Mr. Janssens de Bisthoven** (Belgium) said that paragraph 22 of the report (A/65/181) referred to the principle of *aut dedere aut judicare* in the Geneva Conventions of 1949, in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the 2006 International Convention for the Protection of All Persons from Enforced Disappearance. That reference echoed comments made in his country's submission. However, the original version of that submission had stated that those conventions entailed an obligation of the type *judicare vel dedere*, in other words that States were obliged to prosecute any suspect present on their territory even if no extradition request had been made. That obligation was significantly more restrictive than one of the type *aut dedere aut judicare*, which obliged the State to prosecute the suspect only when it had previously refused an extradition request.

41. Member States had proposed various definitions of universal jurisdiction. One common denominator was that a connection with the forum State was irrelevant in determining jurisdiction. There was also some convergence with regard to the purpose of universal jurisdiction. Many States had highlighted that it should be exercised in the interests of the international community in order to combat impunity for certain crimes under international law, such as grave human rights violations. States appeared to agree that the principle should be exercised without prejudice to the rules of international law and, in particular, those concerning immunity. The Committee should therefore be able to reach a consensus regarding the scope and application of the principle.

42. Certain questions on the topic were already being examined by the International Law Commission, including the obligation to extradite or prosecute (*aut dedere aut judicare*) and the immunity of State officials from foreign criminal jurisdiction. The topic of extraterritorial jurisdiction was on its long-term programme of work. The Committee might therefore consider recommending that the General Assembly should invite the Commission to consider those questions as a priority.

43. In decision 292 (XV) adopted in July 2010, the Assembly of the African Union had reiterated its conviction of the need for an international regulatory body with competence to review and/or handle complaints or appeals arising from the abuse of the principle of universal jurisdiction by individual States. Some States, including Belgium, had expressed reservations on the subject. Conflicts of jurisdiction could be resolved satisfactorily by applying the specific rules contained in treaties or, in the absence of such rules, the dispute settlement mechanisms provided for by international law. However, his delegation was not opposed to requesting the Commission to examine whether the establishment of such an international institution might be considered.

44. The question of universal jurisdiction had been discussed for several years by legal experts from a wide range of backgrounds. Some examples included resolution 9/2000 of the International Law Association concerning international human rights law and practice; the resolution on universal criminal jurisdiction with regard to the crime of genocide, crimes against humanity and war crimes adopted by the Institute of International Law at its 2005 session; and

the resolution on universal jurisdiction adopted by the International Association of Penal Law at its XVIII Congress in 2009. Those texts could constitute a valuable basis for the work of the Committee.

45. **Mr. Chidowu** (United Republic of Tanzania) said that, although the principle of universal jurisdiction was well established, there were divergent views on the conditions for its exercise both in principle and in practice. It was therefore important for the international community to define the concept and clarify its scope, application and limitations. The issue was a sensitive one, and Member States must reach a common understanding in order to guide national courts. The obligations of States must be clarified in order to minimize the risk of double standards or politically motivated misuse. In view of the lack of uniformity in views, the comments submitted by Member States would make a valuable contribution to the discussion. His delegation would welcome further consideration of the subject.

46. **Mr. Pham** Vinh Quang (Viet Nam) said that the concept of universal jurisdiction had been formulated with a view to combating certain serious crimes that affected the entire international community. In order to prevent impunity for such crimes, it was essential to establish criminal jurisdiction. The bases of jurisdiction were territoriality, nationality, passive personality and the protective principle and, last, the universal principle. Universal jurisdiction should be exercised in keeping with the general principles of international law, including sovereign equality, the political independence of States, non-interference in their internal affairs, diplomatic immunity and the immunity of State officials, and the priority of States with primary jurisdictional links. Well-defined conditions, restrictions and limitations should be in place.

47. States clearly had different views and practices with regard to universal jurisdiction, and there was no international instrument codifying the principle. It was therefore necessary to guard against the possibility of its selective or arbitrary application. Further efforts were needed in order to define universal jurisdiction and its scope and application, including the type and range of crimes for which it could be invoked. The International Law Commission could be requested to consider those issues and formulate recommendations.

48. **Ms. Saab** (Lebanon) said that the report had highlighted the legal uncertainty and lack of uniformity in the application of universal jurisdiction, which were a major concern for many Member States including her own. Lebanon was a party to numerous international instruments concerning genocide, war crimes and torture, but felt that a set of underlying legal issues must be resolved in order for the principle of universal jurisdiction to be applied consistently and in good faith.

49. There was a need to determine the crimes in respect of which the principle could be invoked. Moreover, there was currently no specific international norm governing how these crimes should be defined at the domestic level. Standards for the rules of evidence, due process and sentencing also differed from one State to another. States differed as to whether the ratification of conventions entailed an obligation to extradite or prosecute, or the option of exercising universal jurisdiction.

50. Because States exercising the principle claimed to do so on behalf of the international community, it would make sense to negotiate a uniform standard through an international treaty. Such an instrument would guarantee transparency and guard against the misuse of universal jurisdiction. In order to reconcile their views, Member States would have to engage in constructive dialogue.

51. **Mr. Haapea** (Finland) said that since the early 1990s, the demand for accountability for the gravest crimes had grown. The world community had created international criminal tribunals to ensure that those responsible faced justice, but their jurisdiction and resources would always be limited: hence the importance of national courts in ensuring that the alleged perpetrators of the gravest crimes were brought to justice. Criminal jurisdiction could be established on the basis of territoriality, nationality, passive personality, the protective principle and — for certain crimes — universal jurisdiction.

52. The principle of universal jurisdiction should be clearly distinguished from the criminal jurisdiction of international tribunals, which was derived from their statutes. Since the International Law Commission was already engaged in the study of the related issues of the obligation to extradite or prosecute and the immunity of State officials from foreign criminal jurisdiction, other issues relating to the principle of universal

jurisdiction could benefit from study by the Commission.

53. In 2009, a charge had been brought for the first time on the basis of universal jurisdiction against a person residing in Finland. The investigators had made several trips outside Finland in order to collect evidence and the local court dealing with the issue had held hearings abroad in order to interview witnesses. In June 2010, that court had found the defendant guilty of genocide and had sentenced him to life imprisonment in accordance with the Finnish Criminal Code, but the decision had been appealed and was still pending in Appeals Court.

54. The debate on universal jurisdiction was closely related to that on the rule of law, the fundamental idea of which was that no one was above the law and all were accountable before laws that were publicly promulgated, equitably enforced and consistent with international human rights standards. Those principles were all the more important in connection with the most shocking crimes and atrocities. Neither national legal systems nor international criminal institutions alone could end impunity, and a variety of tools, including the principle of universal jurisdiction, needed to be in place in order to ensure accountability.

55. **Mr. Panin** (Russian Federation) said that a better understanding of universal jurisdiction would promote stable and predictable international relations and the consolidation of trust among nations. The Secretary-General's report attested to the wide range of views on the concept of universal jurisdiction and on ways of applying it, reinforcing the importance of a discriminating approach to the subject.

56. In his country's view, universal jurisdiction was the exercise by a State of jurisdiction for crimes that were unrelated to the interests of that State, its citizens or legal entities and that were committed outside the State's territory by non-citizens of that State. In the absence of traditional grounds for jurisdiction such as territoriality or the nationality of the victim, the Russian Criminal Code permitted universal jurisdiction to be exercised solely in cases covered by international treaty, thus permitting Russian courts to institute proceedings for genocide, war crimes and piracy, among others.

57. While it was true that serious crimes must be punishable under international law and universal jurisdiction was an excellent means of combating impunity, his country advised vigilance against any unwarranted interpretation of the principle of universal jurisdiction or its application in a manner that might be detrimental to harmonious international relations. It must be implemented in accordance with the customary rules of international law, particularly those relating to the immunity of State officials.

58. The Russian Federation advocated the independence of the judiciary but deplored instances when court rulings tended to suggest that a State was failing in its international obligations. States and the international community had other tools for combating impunity. His delegation called for strengthening treaty-based mechanisms for multilateral legal cooperation, such as exchange of information, mutual legal assistance and more muscular law enforcement apparatus.

59. **Ms. Noland** (Netherlands) said that the information on her country in paragraph 101 of the Secretary-General's report (A/65/181) should be corrected: the phrase "Besides, two cases against Dutch nationals were premised on universal criminal jurisdiction" should be replaced by "Besides two cases against Dutch nationals, these cases were premised on universal jurisdiction".

60. The issues raised by Governments concerning universal jurisdiction could be studied further, provided it was done from the standpoint of international law, in terms both of substance and of procedure. On substance, further research could be done on whether the accused must be present in the State exercising universal jurisdiction (as was the case in her country) and on the relationship between universal jurisdiction and other bases of jurisdiction, such as territoriality. However, existing international law and dispute settlement mechanisms sufficed to permit the resolution of disputes on the exercise of universal jurisdiction. Accordingly, her Government saw no merit in establishing a new international regulatory body for that purpose.

61. On procedure, it might be worthwhile to consider whether the International Law Commission could be requested to consider the topic, all the more so as it could conduct such work in conjunction with that on related topics such as the obligation to extradite or prosecute (*aut dedere aut judicare*) and immunity of State officials from foreign criminal jurisdiction. Work on universal jurisdiction could build on the work

already done on the topic by the African Union-European Union Technical Ad Hoc Expert Group.

62. **Mr. Appreku** (Ghana) noted that international law generally required some connection of territory or nationality in order to trigger the exercise by a forum State of criminal jurisdiction. Under customary international law, universal jurisdiction had historically been and remained an exception to that rule — an exception that was well established in the case of piracy and slavery, for example.

63. There was a growing corpus of international standards aimed at combating impunity for such offences as torture, human trafficking, crimes against humanity, war crimes and genocide. Some had wrongly interpreted that welcome trend as justifying the exercise under customary law of universal jurisdiction in respect of those crimes.

64. The *travaux préparatoires* of the Convention on the Prevention and Punishment of the Crime of Genocide showed that the fact that the Convention provided treaty-based universal jurisdiction over States parties had not been deemed by all States to be evidence that genocide fell under universal jurisdiction in terms of customary law. Moreover, judgements in cases pronounced as amenable to universal jurisdiction had not been unanimous.

65. Several decades ago, during the consideration of the draft Code of Offences against the Peace and Security of Mankind, no consensus had been reached on the scope of universal jurisdiction under customary international law. The issue of universal jurisdiction had been deferred to the day when a permanent international criminal court would be established. The Rome Statute of the International Criminal Court had created such an institution, and once its membership became truly universal, a case could be made for universal jurisdiction in respect of crimes specified in the Statute: genocide, crimes against humanity and war crimes.

66. For the African States, the overarching issue was whether the doctrine of universal jurisdiction should be admitted as a way of expanding the rule of law and fighting impunity when the applicable rules on the scope of crimes were not well established, and in particular, where universal jurisdiction came into conflict with the rules of customary international law regarding the immunity of those who held high-ranking positions such as Head of State or Government or minister for foreign affairs. The diverging views of States and legal scholars and the cases when decisions based on the controversial application of universal jurisdiction had been overturned by higher courts spoke to the need to clarify the scope and application of that concept.

67. **Mr. Jomaa** (Tunisia) said the report by the Secretary-General pointed to the absence of a common, clear understanding of universal jurisdiction and underscored the lack of uniformity in its application. In their comments, some Governments noted that under customary law, universal jurisdiction applied only to piracy, yet others took the view that it applied to other crimes such as slavery, genocide, war crimes and crimes against humanity, while a third group considered that it extended to some serious crimes, but in other cases was based on treaty or statute and thus was incumbent only on parties thereto. Divergent views had also been expressed on absolute and conditional universal jurisdiction, the type of crimes to be prosecuted under each of them, and the invocation of universal jurisdiction with respect to the immunity of State officials and diplomatic immunity.

68. The Secretary-General's report revealed that in many countries, States had broad prosecutorial discretion to determine whether to assert universal jurisdiction or refrain from exercising it in a specific case. In other legal systems, however, the decision to prosecute was subject to considerations relating to the public interest, something that could introduce an element of bias, thereby undermining the entire rationale for universal jurisdiction.

69. Universal jurisdiction, as a complementary tool in the fight against impunity, must be used in good faith and in accordance with other principles and rules of international law. Appropriate safeguards should be applied to ensure that it was exercised responsibly and not exploited for political purposes. If universal jurisdiction was used for political purposes to target specific individuals, far from advancing the fight against impunity, it would merely undermine the rule of law and intensify adversarial relations among nations.

70. **Mr. Nega** (Ethiopia) recalled that the current debate originated with the African Union's call for suspension of the prosecutions instituted and arrest warrants issued by certain foreign courts against sitting

African Heads of State or Government or other high-ranking officials, in violation of their immunity. Ethiopia considered that universal jurisdiction should be exercised in accordance with recognized rules of international law and accordingly deplored the growing tendency towards its unregulated and arbitrary use by some States, contrary to the rule of law. Absent a generally accepted definition of universal jurisdiction and of the scope of the crimes it covered, its application would inevitably be subjective. A clear distinction must be drawn between the legal and political issues connected with universal jurisdiction. The General Assembly should deal with the political aspects in plenary session, while the Sixth Committee should remain seized of the matter, focusing on determining the scope and application of the principle of universal jurisdiction.

71. **Ms. Valenzuela Díaz** (El Salvador) said that universal jurisdiction could be exercised in respect either of a crime under international law or of an international crime defined in domestic law or a treaty to which the State was a party. Both eventualities were covered in her country's domestic legislation, in relation to such crimes as genocide, war crimes, crimes against humanity, forced disappearance, trafficking in persons, piracy, air piracy, and participation in international criminal organizations. In addition, El Salvador had ratified a number of treaties that might supplement domestic provisions with a view to the exercise of universal jurisdiction.

72. Work on universal jurisdiction was only at the initial stage, and the objectives to be pursued must be clearly defined. She supported the recommendation of the Rio Group that a working group of the Sixth Committee should be established to assist in that delicate task. Consideration of the topic must be advanced while avoiding duplication of effort and the proliferation within the United Nations of tribunals with competence in criminal matters: instead, the mechanisms already in place for combating impunity should be strengthened, starting with the development of a legal instrument to harmonize all aspects of the application of universal jurisdiction.

73. **Mr. Retzlaff** (Germany) said that universal jurisdiction was a legitimate tool to facilitate prosecution at the national level and thereby avert impunity. A number of treaties obliged States parties to apply universal jurisdiction, and Germany therefore held the view that it should be deemed to be universally recognized.

74. The competent German courts could exercise jurisdiction over a number of serious crimes, such as genocide, crimes against humanity and war crimes, even when they were committed abroad, and over crimes that were to be prosecuted on the basis of a binding international agreement.

75. Since some States retained concerns about the application of universal jurisdiction, however, Germany held that the International Law Commission, which was already dealing with a similar topic, namely the obligation to extradite or prosecute (*aut dedere aut judicare*), could be entrusted with the consideration of universal jurisdiction.

76. **Ms. Naidu** (South Africa) said that the Secretary-General's report underscored the tenuous position held by universal jurisdiction in some States. While in some the nature of the crime was important, in that certain crimes could be prosecuted without the need to prove a jurisdictional link, in other States the focus was narrower and more specific to the enforcement or adjudicatory aspects of jurisdiction. Moreover, States did not agree on the specific crimes that would lend themselves to the exercise of universal jurisdiction: some cited piracy alone, others mentioned slavery, genocide and war crimes, while yet others believed the exercise of jurisdiction must be treaty-based.

77. For South Africa's purposes, it was not the principle of universal jurisdiction as such but the incorporation of the crimes in question into domestic law that would provide the basis for jurisdiction. Yet, as the Secretary-General's report showed, in other States there was direct applicability, meaning that no additional domestic legislation needed to be passed. It was thus clear that States had differing ideas about the scope and application of the principle of universal jurisdiction, so that more work needed to be done. Accordingly, her delegation supported the proposal to establish a working group of the Sixth Committee to determine similarities and differences in how States approached universal jurisdiction.

The meeting rose at 6 p.m.